



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 33 of the Housing (Scotland)
Act 1988**

Chamber Ref: FTS/HPC/EV/23/4604

Re: Property at 5D Bobbins Gate, Paisley, PA1 2NY (“the Property”)

Parties:

**Dr Anne Coleman, C/O Penny Lane Homes, 36 High Street, Johnstone, PA5
8AH (“the Applicant”)**

Mr Andrew Scott, 5D Bobbins Gate, Paisley, PA1 2NY (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined to make an eviction order**

Background

- 1 By application to the Tribunal dated 19 December 2023 the Applicant sought an eviction order against the Respondent in respect of the Property under section 33 of the Housing (Scotland) Act 1988. In support of the application the Applicants provided the following documentation:-
- (i) Short Assured Tenancy Agreement between the parties dated 31 May 2017 together with Form AT5;
 - (ii) Notice to Quit dated 11 September 2023 together with proof of service by recorded delivery on 26 September 2023;
 - (iii) Notice under section 33 of the Housing (Scotland) Act 1988 dated 11 September 2023 together with proof of service by recorded delivery on 26 September 2023;

- (iv) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Renfrewshire Council together with proof of service by email;
 - (v) Rent Statement.
- 2 By Notice of Acceptance of Application a Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned and a copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers.

Case Management Discussion

- 3 The Applicant was represented at the Case Management Discussion by Mrs Kellie Deans of Penny Lane Homes. The Respondent was not present. The Tribunal noted that he had been served with the application paperwork which included notification of the date and time of the Case Management Discussion together with instructions for joining the teleconference. The Tribunal therefore determined to proceed in his absence.
- 4 The Tribunal explained the purpose of the Case Management Discussion and the legal test and asked Mrs Deans for her submissions on behalf of the Applicant. For the avoidance of doubt the following is a summary of the submissions made and does not constitute a verbatim account of the discussion.
- 5 Mrs Deans confirmed that the Applicant sought an eviction order as she wished to sell the property. She wanted to obtain the best price and was therefore looking for vacant possession. Mrs Deans advised that there had been some communication throughout the tenancy with the Respondent but this had been sporadic at times. Following the service of the notice the Respondent had gotten in touch to say that he had somewhere else to move to. He had advised that he would provide an update in due course but Mrs Deans had heard nothing further from him. Mrs Deans stated in response to questions from the Tribunal that the property had been last inspected on 25th January 2024. The Respondent was not present but had agreed access on that date.
- 6 Mrs Deans confirmed that the Respondent was still residing in the property with his wife. They had no dependents. The Respondent had resided in the property since 2017 and his wife had moved in shortly thereafter. The Respondent was believed to be in full time employment, but Mrs Deans was unsure as to his wife's situation in this regard. Mrs Deans was not aware of any entitlement to benefits that either the Respondent or his wife would have. In response to questions from the Tribunal Mrs Deans advised that she was not aware of any vulnerability on the Respondent's part, albeit she understood that his wife suffered from anxiety. Mrs Deans confirmed that the

Respondent's conduct of the tenancy had been generally fine with the exception of rent arrears which were currently in the sum of £1685. A payment order had previously been granted by the Tribunal in this regard.

- 7 With regard to the Applicant's circumstances, Mrs Deans advised that the Applicant was keen to sell the property in order to fund her retirement and she suffered from ill health. This was the only property that Mrs Deans managed on the Applicant's behalf.

Relevant Legislation

- 8 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Housing (Scotland) Act 1988, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

“33 Recovery of possession on termination of a short assured tenancy.

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied—

(a) that the short assured tenancy has reached its ish;

b) that tacit relocation is not operating; and

(c)

(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house, and

(e) that it is reasonable to make an order for possession.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than six months, that period;

(ii) in any other case, six months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.

(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.”

Findings in Fact and Law

- 9 The Applicant entered into a Short Assured Tenancy Agreement with the Respondent the term of which was 31 May 2017 to 30 November 2017 and monthly thereafter.
- 10 The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 11 On 26 September 2023 the Applicant delivered a Notice under section 33 of the Housing (Scotland) Act, stating that the Applicant required the property back by 30 November 2023, and a Notice to Quit to the Respondent which sought to terminate the tenancy as at that date. The Notice to Quit was in the prescribed form. The Notices were served by recorded delivery mail.
- 12 The Notice to Quit terminates the tenancy as at 30 November 2023 which is a valid ish date under the terms of the tenancy agreement.
- 13 The rent payable under the terms of the tenancy agreement was £450 per month.
- 14 As at 12 June 2024 the Respondent has accrued rent arrears in the sum of £1685.
- 15 The Applicant requires vacant possession of the property in order to sell same to fund her retirement.
- 16 The Respondent resides at the property with his wife. They have no dependents. The Respondent and his wife are both believed to be in employment.
- 17 The Respondent has advised the Applicant's representative that he has obtained alternative accommodation.

Reasons for Decision

- 18 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved.
- 19 The Tribunal was satisfied that the Respondent had been served with a valid Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988, terminating the tenancy as at the ish date of 30 November 2023. The

issue for the Tribunal to determine therefore was whether it was reasonable in all the circumstances to grant an eviction order.

- 20 The Tribunal accepted the Applicant's reason for terminating the tenancy, namely her intention to sell in order to fund her retirement. This appeared to be a credible explanation for the action she had taken. The Tribunal also took into account the outstanding rent arrears, noting from the rent statement that the payments of rent by the Respondent had been sporadic at times resulting in a current balance of £1685. Whilst the Tribunal accepted that the Respondent's conduct of the tenancy had otherwise been satisfactory, the payment of rent was a fundamental obligation of the tenancy that the Respondent had repeatedly breached and was therefore of relevance to the Tribunal in considering the question of reasonableness.
- 21 The Tribunal also had regard to the Respondent's personal circumstances, noting that he and his wife were the sole occupants of the property and believed to be in employment. There were no dependents who would be a risk were an eviction order to be granted. The Tribunal also took into account the Respondent's comments to Mrs Deans which suggested that he had obtained alternative accommodation. The Tribunal could therefore make a reasonable assumption that he had obtained housing elsewhere, or at the very least was in the process of doing so.
- 22 Having weighed up those factors that were relevant to the question of reasonableness the Tribunal concluded that the prejudice to the Respondent were the eviction order to be granted did not outweigh the prejudice to the Applicant were the tenancy to continue. The Tribunal considered that the Applicant had a genuine and credible reason to seek recovery of the property and on that basis it would be reasonable to grant the eviction order sought.
- 23 The Tribunal therefore determined to make an eviction order. The decision of the Tribunal was unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.



12 June 2024

Legal Member/Chair

Date